

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93528; File No. SR-NYSEArca-2021-93)

November 5, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect a Modification to the Permitted Components of the Tracking Baskets of the Putnam Focused Large Cap Growth ETF, Putnam Focused Large Cap Value ETF, Putnam Sustainable Future ETF, and Putnam Sustainable Leaders ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 29, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect an amendment to the Application and Exemptive Order governing the Putnam Focused Large Cap Growth ETF, Putnam Focused Large Cap Value ETF, Putnam Sustainable Future ETF, and Putnam Sustainable Leaders ETF, which are listed and traded on the Exchange under NYSE Arca Rule 8.601-E. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange adopted NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Commentary .01 to Rule 8.601-E requires the Exchange to file separate proposals

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95). Rule 8.601-E(c)(1) provides that “[t]he term “Active Proxy Portfolio Share” means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601-E(c)(2) provides that “[t]he term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601-E(c)(3) provides that “[t]he term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the

under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Pursuant to this provision, the Exchange submitted a proposal to list and trade shares (“Shares”) of Active Proxy Portfolio Shares of the Putnam Focused Large Cap Growth ETF, Putnam Focused Large Cap Value ETF, Putnam Sustainable Future ETF, and Putnam Sustainable Leaders ETF⁵ (each a “Fund” and, collectively, the “Funds”) on the Exchange under NYSE Arca Rule 8.601-E. The Shares are listed and traded on the Exchange pursuant to their listing rule.⁶

The Application and Exemptive Order incorporate by reference the terms and conditions of the exemptive order granted to Fidelity Beach Street Trust (“Beach Street”), Fidelity Management & Research Company (“FMR”), Fidelity Distributors Corporation (“FDC”), as such order may be amended from time to time, and the purpose of this filing is to reflect an amendment to such relief, as described below.

The Fidelity Exemptive Relief

Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.”

⁵ On May 13, 2021, the Commission published the notice of filing and immediate effectiveness relating to the listing and trading of shares of the Putnam Focused Large Cap Growth ETF, Putnam Focused Large Cap Value ETF, Putnam Sustainable Future ETF, and Putnam Sustainable Leaders ETF. See Securities Exchange Act Release No. 91895 (May 13, 2021), 86 FR 27126 (May 19, 2021) (SR-NYSEArca-2021-39) (the “Notice”).

⁶ See id. The Putnam ETF Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-15203), dated February 19, 2021 (the “Application”). On May 10, 2021, the Commission issued an order (the “Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34266, May 10, 2021). Investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. See Notice, 86 FR at 27127-28 n. 9.

Beach Street, FMR, and FDC filed a ninth amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Prior Fidelity Application”).⁷ On December 10, 2019, the Commission issued an order (the “Prior Fidelity Exemptive Order”) under the 1940 Act granting the exemptions requested in the Prior Fidelity Application.⁸ The Exchange previously submitted a proposal to list and trade shares of Active Proxy Portfolio Shares of the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF (the “Fidelity Funds”), which are subject to the Prior Fidelity Exemptive Order.⁹

Under the Prior Fidelity Exemptive Order, the Fidelity Funds are required to publish a basket of securities and cash that, while different from a fund’s portfolio, is designed to closely track its daily performance (the “Fidelity Proxy Portfolio”). The Prior Fidelity Application stated that the Fidelity Proxy Portfolio is comprised of (1) select recently disclosed portfolio holdings (“Strategy Components”); (2) liquid ETFs that convey information about the types of instruments in which the fund invests that are not otherwise fully represented by Strategy Components (“Representative ETFs”); and (3) cash and cash equivalents. As set forth in the Fidelity Notice, investments made by the Fidelity Funds will comply with the conditions set forth in the Prior Application and the Prior Exemptive Order.¹⁰

⁷ See File No. 812-14364, dated November 8, 2019.

⁸ See Investment Company Act Release No. 33712, December 10, 2019.

⁹ On April 14, 2021, the Commission published the notice of filing and immediate effectiveness relating to the listing and trading of shares of the Fidelity Funds. See Securities Exchange Act Release No. 91514 (April 8, 2021), 86 FR 19657 (April 14, 2021) (SR-NYSEArca-2021-23) (the “Fidelity Notice”).

¹⁰ See Fidelity Notice, 86 FR at 19658, n. 8.

On October 30, 2020, and as amended on April 2, 2021, June 11, 2021 and June 30, 2021, Beach Street, FMR, FDC, and Fidelity Covington Trust sought to amend the Prior Fidelity Exemptive Order to, among other things, permit the Fidelity Funds to include select securities from the universe from which a fund’s investments are selected such as a broad-based market index in the fund’s Proxy Portfolio.¹¹ On August 5, 2021, the Commission issued an order granting the relief requested (the “Updated Fidelity Exemptive Order”).¹² The Exchange subsequently submitted a proposal with respect to the listing and trading of the Fidelity Funds to reflect the conditions set forth in the Updated Fidelity Exemptive Order.¹³

The Funds

As set forth in the Exchange’s previous rule filing to list and trade Shares of the Funds, under the Exemptive Order, the Funds are required to publish a Tracking Basket¹⁴ of securities and cash that, while different from a Fund’s portfolio, is designed to closely track its daily performance. Like the Fidelity Funds, the Tracking Basket for each of the Funds will be comprised of Strategy Components, Representative ETFs, and cash and cash equivalents.

As set forth in the Notice, investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order, which incorporate by reference the terms and conditions of the exemptive order granted to Beach Street, FMR, and FDC, as such

¹¹ See File No. 812-15175.

¹² See Investment Company Act Release No. 34350, August 5, 2021. Although the Updated Fidelity Exemptive Order permits the use of Creation Baskets that include instruments that are not included, or are included with different weightings, in a fund’s Proxy Portfolio, that aspect of the Updated Fidelity Exemptive Order is not part of this proposed rule change.

¹³ See Securities Exchange Act Release No. 93108 (September 23, 2021), 86 FR 53993 (September 29, 2021), (SR-NYSEArca-2021-81).

¹⁴ The Funds use the term “Tracking Basket” to mean the Proxy Portfolio for purposes of Rule 8.601-E(c)(3). See Notice, 86 FR at 27128 n. 12.

order may be amended from time to time.¹⁵ Accordingly, the Exchange proposes to update the listing rule for the Shares to reflect the amendment of the Prior Fidelity Exemptive Order and the updated conditions set forth in the Updated Fidelity Exemptive Order as they relate to the Funds. Specifically, the Exchange proposes to reflect the condition in the Updated Fidelity Exemptive Order that permits the Funds to include select securities from the universe from which a Fund's investments are selected such as a broad-based market index in the Fund's Tracking Basket.

Except for the change noted above, all other representations made in the Exchange's previous rule filing to list and trade Shares of the Funds remain unchanged and will continue to constitute continuing listing requirements for the Funds. The Funds will also continue to comply with the requirements of Rule 8.601-E.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁸

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed revision is intended to

¹⁵ See Notice, 86 FR at 27127-28 n. 9; Application at 2 n. 1; Exemptive Order at 1 n. 1.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

allow the Funds to comply with the Updated Fidelity Exemptive Order, which is incorporated by reference in the Application and Exemptive Order. Specifically, the proposed rule change would permit the Funds to include select securities from the universe from which a Fund's investments are selected such as a broad-based market index in such Fund's Tracking Basket. The Exchange also believes that the proposed change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would permit each Fund to make certain adjustments to the components of its Tracking Basket, thereby continuing to promote competition among various ETF products. Except for the changes noted above, all other representations made in the respective rule filings remain unchanged and, as noted, will continue to constitute continuing listing requirements for the Funds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. As noted, the purpose of the filing is to reflect an amendment to the Prior Fidelity Exemptive Order, the terms and conditions of which are incorporated by reference in the Application and Exemptive Order governing the listing and trading of the Funds. To the extent that the proposed rule change would continue to permit listing and trading of other types of actively-managed ETF that have characteristics different from existing actively-managed and index ETFs, the Exchange believes that the proposal would benefit investors by continuing to promote competition among various ETF products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing. The Exchange states that the proposed rule change raises no novel regulatory issues because the proposed rule change would reflect an aspect of exemptive relief that the Commission has already granted. The Exchange also notes that similar proposals to amend the listing rules of other shares that NYSE Arca also lists and trades pursuant to Rule 8.601-E currently are in effect.²³ For these reasons, the Commission believes that waiver of the 30-day operative delay is

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ See Securities Exchange Act Release No. 92449 (July 20, 2021), 86 FR 40102 (July 26, 2021) (SR-NYSEArca-2021-61) and No. 93108 (September 23, 2021) (SR-NYSEArca-2021-81).

consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-93 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-93 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

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Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).